

Expedited Arbitration: A Practical Approach to Resolving Disputes

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Arbitration can be an efficient and cost-effective way for parties to resolve disputes in a private, impartial forum. For less complicated matters, or when relatively small amounts of money are at stake, expedited arbitration may be an attractive option, especially in situations where the parties would prefer a ruling on the merits over a compromised settlement.

Arbitration is a private method of alternative dispute resolution whereby the parties agree have their dispute decided by an Arbitrator instead of through the traditional court system. A binding agreement to arbitrate the dispute is an essential prerequisite. The parties may enter into an arbitration agreement before or after a dispute arises. Thus, whether to arbitrate a particular dispute is an important consideration even if the parties do not already have a pre-existing arbitration agreement in place.

In arbitration, the parties select an Arbitrator to conduct the proceedings fairly and impartially, giving each party a reasonable opportunity to present its case. Subject to the parties' agreement, the Arbitrator has broad discretion to regulate and tailor the proceedings to fit the particular aspects of the individual case at hand. An arbitration proceeding typically follows a framework similar to a court case, but arbitration is typically more streamlined and less formal. An arbitration proceeding usually involves the exchange of documents and witness information between the parties and the presentation of arguments and evidence to the Arbitrator, who issues an award (decision) that is generally final and enforceable in a court of law and subject to only very limited judicial review.

Arbitration can offer the parties many advantages including more flexibility and control over the process, convenience to parties, a private forum, less formal discovery and procedural rules, and expediency to a final decision. The arbitration process is typically faster than court litigation. In arbitration, matters are typically resolved in months, not years. Non-complex cases can take less than 12 months, while expedited matters can be resolved in less than six months. Arbitration is also generally cheaper than court litigation. Traditionally, arbitration allows for only limited discovery, often allowing for the exchange of documents and witness lists, with no or very limited depositions. Also, the rules of evidence and procedure are more relaxed and simplified, and parties can often raise matters to the Arbitrator through email and telephone conferences instead of formal motion practice. In fact, arbitration procedures can limit a party's ability to file motions, such as requiring a party to demonstrate a likelihood of prevailing on the merits before allowing leave to file dispositive motions.

Arbitration gives the parties more flexibility and control over the process. The parties get to choose their decision maker and can select an Arbitrator with experience and subject matter expertise. Further, the parties have broad latitude to agree on the legal and procedural rules that will govern the proceedings. Arbitration is a “party-driven” process. Thus, if the parties agree on how a matter should be handled, the Arbitrator will typically acquiesce and rule accordingly. Yet the Arbitrator is there to decide matters on which the parties cannot agree.

Arbitration can offer more convenience to the parties, allowing them to agree on a hearing date and length of time for the hearing. Thus, the parties in arbitration receive a firm setting for the hearing, as opposed to a trial docket. Arbitration also offers more privacy to the parties, as arbitration hearings are not open to the public and there is no public record of the claims, evidence, or rulings. Parties can also specify confidentiality in their agreement to arbitrate and/or stipulate to a protective order to gain even higher levels of privacy in arbitration. This privacy can be lost, however, if a party ends up challenging the arbitration award in court.

Some possible downsides to arbitration include the likelihood of limited discovery and the limited availability of court review. While less discovery can be a desirable way to control costs, in some cases it could hinder a party’s ability to access to all of the information necessary to fully evaluate and prove its case. The parties in arbitration also have more limited ability to subpoena third parties to testify or produce documents.

The lack of right to appeal creates more finality in the arbitration process and keeps costs down. Courts generally impose a heavy presumption in favor of confirming an arbitration award and allow vacatur only in very limited circumstances, such as when an arbitrator exceeds her authority or where an award is procured by corruption, fraud, or undue means. *See, e.g.,* Federal Arbitration Act (FAA), 9 U.S.C. § 10(a). Given the broad range of discretion given to the Arbitrator, it is imperative that the parties have full confidence in the Arbitrator’s objectivity, legal ability, and attention to detail in the case.

In some cases, especially where smaller amounts of money are at stake, the parties may wish to consider expedited arbitration as a practical and efficient way to resolve disputes. For example, the American Arbitration Association (AAA) Commercial Rules provide Expedited Procedures (E-1 through E-10) that presumptively apply where no claim or counterclaim exceeds \$100,000 (exclusive of interest, attorneys’ fees, and arbitration costs). Additionally, by agreement, the parties to an arbitration can choose to apply the Expedited Procedures in any case (regardless of the dollar amount at stake). *See* AAA Commercial Rule R-1(d). The Expedited Procedures are designed to be more streamlined and cost-effective. There are typically no discovery or motions allowed, and the evidentiary hearing is limited to one day. Additionally, the administrative and arbitrator fees are typically less, which results in lower arbitration costs to parties.

More specifically, key features of AAA Expedited Proceedings include: (1) streamlined administrative rules with quicker deadlines for extensions, amendments to pleadings, and appointment of the Arbitrator, E-1 to E-4; (2) basic document exchange only, with no other

discovery and no motions allowed, E-5; (3) resolution of claims under \$25,000 through document submission, E-6; (4) a one-day evidentiary hearing to be held within 60 days after the preliminary hearing, E-7; and (5) an award to be issued within 14 days after the evidentiary hearing is closed, E-9.

Expedited Arbitration may be an attractive option to parties in a number of circumstances including cases in which: (1) the cost of litigation exceeds the amount of money at stake; (2) the parties would prefer a quick decision on the merits over a compromised settlement; (3) the parties already have the information they need to present their case; and (4) the parties do not want to commit the time and resources necessary to conduct extensive discovery.

In short, Expedited Arbitration makes practical sense when the parties are willing to accept a more limited scope of discovery and proceedings in exchange for a speedier outcome with binding decision by a third-party neutral. The key to a successful and cost-effective arbitration process starts with a high level of cooperation between the parties as to what process and procedures to use, saving time and resources to focus on the substantive merits of the dispute. The most expedient arbitrations involve cases where all parties are motivated to gain the certainty of a decision so they can move on to other matters.

Parties can include expedited procedures in their arbitration agreement, for example to automatically apply to disputes involving a certain dollar amount. Additionally, parties can stipulate to submit a particular matter under expedited procedures after a dispute has already arisen, regardless whether they already have an arbitration agreement in place. Thus, it is important for attorneys to remember that resolving a case through Expedited Arbitration can be an effective option for parties to gain an efficient and expedient resolution of their disputes.